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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)	
)	IN EQUITY NO. C-125-MDD
Plaintiff,)	Subproceeding: 3:73-CV-00127-MDD-WGC
)	
WALKER RIVER PAIUTE TRIBE,)	
)	
Plaintiff-Intervenor,)	THE UNITED STATES' DETAILED
vs.)	STATEMENT OF WATER RIGHT
)	CLAIMS ON BEHALF OF THE
WALKER RIVER IRRIGATION DISTRICT,)	WALKER RIVER PAIUTE INDIAN
a corporation, et al.,)	TRIBE
)	
Defendants.)	
_____)	

Pursuant to this Court’s order, the United States provides this Detailed Statement of Water Right Claims on Behalf of the Walker River Paiute Indian Tribe.¹ The United States proposed its filing of this statement to provide the Court and interested Defendants more information about the specific water rights that the United States claims on behalf of the Walker River Paiute Indian Tribe. Moving forward, the United States will seek to secure the rights specified here but reserves the right to modify this statement, as needed, based on the evidence presented and decisions made by this Court.

I. INTRODUCTION

In 1924, the United States initiated this action to claim irrigation water directly from the surface flows of the Walker River on behalf of the Walker River Paiute Indian Tribe (“Tribe”) for lands within the then-existing Walker River Indian Reservation.² In the course of the litigation spanning from 1924 through 1931, the United States presented evidence to establish a 150 cfs water right necessary to irrigate approximately 10,000 acres.³ The United States was not awarded the 150 cfs direct-flow water right it sought. In 1936, the Federal District Court (“Decree Court”) issued an opinion and decree that recognized a water right for the Tribe’s existing irrigation uses and based on state-law based principles of prior appropriation.⁴

¹ *Stipulated Scheduling Order and Discovery Plan* ¶ 1 at 2 (Mar. 7, 2019) (ECF No. 2437) (“Scheduling Order”).

² Throughout this document, “Reservation” refers to those lands taken into trust by the United States on behalf of the Tribe and its members pursuant to law and as surveyed pursuant to 25 U.S.C. § 176.

³ Evidence was presented on the claim of the United States through July 24, 1931, when the case was submitted to the presiding Special Master for decision.

⁴ *See United States v. Walker River Irr. Dist.*, 11 F. Supp. 158 (D. Nev. 1935), *rev’d*, 104 F.2d 334 (9th Cir. 1939).

1 Fundamentally, that water right was based on no more than past and then-existing irrigation
2 practices (approximately 2,100 acres of irrigated land from the direct flow of the Walker River).
3 In 1939, the Ninth Circuit reversed the Decree Court's decision and determined that the United
4 States was entitled to a federal reserved water right for those direct flow waters that had been put
5 to irrigation use. Based on the then-existing irrigation practices of the Tribe, as determined by
6 the District Court, the Ninth Circuit determined that the United States was entitled to a water
7 right from the flow of the Walker River of 26.25 cfs for irrigation of 2,100 acres associated with
8 the Walker River Indian Irrigation Project ("WRIIP"). The right was specified to have an
9 irrigation season of 180 days.⁵ The Final Decree specifically and broadly retained the District
10 Court's jurisdiction to modify the decree.⁶

13 In 1992, the Tribe and the United States sought to modify the Final Decree and asserted
14 additional water right claims on behalf of the Tribe for both surface and groundwater from the
15 Walker River Basin.⁷ Specifically, the United States asserted the following three water right
16 claims:
17

20 ⁵ *Walker River Irr. Dist.*, 104 F.2d at 340. The Ninth Circuit also recognized that the Tribe was
21 entitled to the necessary flow from the Walker River "... for domestic and stock watering
22 purposes," *Id.* Although not quantified at the time, the stock and domestic, commercial,
23 municipal, and industrial water rights claimed and described below in sections III.A and III.C,
24 are claimed here in the quantities specified from the available surface water or groundwater
25 sources available to the Tribe.

26 ⁶ *Decree ¶ XIV, United States v. Walker River Irrigation Dist.*, No. C-125 (D. Nev. 1936), *as*
27 *amended by Order for Entry of Amended Final Decree to Conform to Writ of Mandate, etc.*,
28 *United States v. Walker River Irrigation Dist.*, In Equity No. C-125 (D. Nev. 1940) ("Final
Decree").

⁷ In 1997, the United States amended its claim to include additional water right claims on behalf
of additional Indian tribes and other agencies of the federal government. As determined by this
Court, litigation has commenced only of those water right claims associated with the Tribe. All

- 1) for Weber Reservoir;
- 2) for lands restored and added to the Reservation; and
- 3) for groundwater under all lands of the Reservation.

This detailed statement of claims is the United States' good faith estimate of the specific water rights that it asserts on behalf of the Tribe and that it will pursue on behalf of the Tribe. This statement supersedes all previous federal descriptions of the Tribes' water right claims in the Walker River Basin. The Tribe and the United States have also filed their amended counterclaims simultaneously with the filing of this detailed statement.

II. WEBER RESERVOIR

For decades prior to the construction of Weber Reservoir, the United States Indian Service (predecessor to the Bureau of Indian Affairs) contemplated the construction of a reservoir on the Reservation to increase the water supply to the Tribe. Such storage was the subject of Congressional investigation and was extensively studied by the Indian Service.⁸ In 1933, Congress passed the National Industrial Recovery Act ("NIRA") and authorized sizable, federal appropriations for the "construction, repair, and improvement of ... any publicly owned instrumentalities and facilities, conservation and development of natural resources, including ... construction of river and harbor improvements and flood control." NIRA, 48 Stat. 201-202. Through the NIRA, President Roosevelt created the Federal Emergency Administration of Public Works ("PWA") and directed the expenditure of appropriations consistent with NIRA's goals. In

remaining water right claims of the United States will be addressed after the claims for the Tribe have been resolved. *See* Scheduling Order at 2.

⁸ *See Walker River Irr. Dist.*, 11 F. Supp. at 166–67 (extensive discussion of the congressionally authorized investigation of storage on the Reservation with the ultimate report referred to as the "Blomgren Report").

1 1933, the Indian Service received \$137,000 in federal appropriations from the PWA to construct
2 Weber Reservoir. Such appropriations were used not only to construct the Weber Dam and
3 reservoir but also to secure title to allotted Indian lands that would be inundated by the water
4 impounded behind Weber Dam. Construction of Weber Reservoir began in September 1933, and
5 impoundment of water behind Weber Dam began soon after. Construction for Weber Reservoir
6 was completed by 1937 with the installation of spill-gates to control water level.
7

8 The water right associated with Weber Reservoir was established through the federal
9 government's inherent power to reserve unappropriated waters to give effect to the federal
10 government's lawful action. *Winters v. United States*, 207 U.S. 564, 28 S. Ct. 207, 52 L. Ed. 340
11 (1908) ("The power of the government to reserve the waters and exempt them from
12 appropriation under the state laws is not denied, and could not be."). Such right arose when the
13 Executive, acting through the Indian Service, secured congressionally authorized funds for the
14 construction of Weber Reservoir in September, 1933. *See, e.g., Walker River Irr. Dist.*, 104 F.2d
15 at 338. The United States could assert a priority for Weber Reservoir storage consistent with this
16 date. The United States, however, asserts a priority date for Weber Reservoir storage of April 15,
17 1936.

18 Weber Reservoir impounds Walker River flows upstream of the WRIIP diversion point,
19 collecting the direct flows decreed to the United States for the Tribe's benefit⁹, but the reservoir
20 also allows for additional storage to supply the Tribe's needs. Since its construction, Weber
21 Reservoir has been used to deliver water throughout lands held in trust for the Tribe and its
22 members. Engineering analysis reveals that since 1933, the Tribe has used water stored behind
23 Weber Dam to irrigate approximately 5,956 acres on the Reservation. Such land falls into three
24 general categories: 1) 2,100 acres of land within the WRIIP; 2) 2,800 acres of non-WRIIP
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26
27
28

⁹ The canals leading to WRIIP originate at Weber Reservoir.

1 pasture land historically irrigated using surplus and end of year flows delivered through WRIIP
 2 facilities; and 3) 1,056 acres of pasture land historically irrigated using Walker River flows
 3 diverted under a separate Lake Pasture Diversion.¹⁰

4 The Tribe has historically irrigated lands in each of these categories using water from
 5 Weber Reservoir storage. Accordingly, the Weber Reservoir Storage right is the right to store
 6 surface flows, in addition to those recognized in the Final Decree, in Weber Reservoir at any
 7 time during the year subject to two conditions: 1) available surplus flows (defined as
 8 unappropriated flows as of April 15, 1936) and 2) available storage space in the Reservoir. The
 9 United States and the Tribe seek a storage right to the capacity of the reservoir (approximately
 10 13,000 acre-feet (“af”)) throughout the year and the right to carry stored water over to following
 11 years.¹¹

14 **III. RESTORED AND ADDED LANDS**

15 The Walker River Indian Reservation was established on November 29, 1859 with a land
 16 base of approximately 320,000 acres (“Original Reservation”). Under the Act of May 27, 1902,
 17 32 Stat. 260-261, the Original Reservation land base was substantially reduced. Nevertheless,
 18 from 1918 to 1972, the United States added over 277,000 acres to the Reservation as
 19 described, below.
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 21
 22
 23

24 ¹⁰ Analysis shows that the Tribe frequently has not been able to achieve the full crop irrigation
 25 requirement for all the historically irrigated lands in a given year. Regardless of the crop demand
 26 that might exist to provide maximum irrigation for any crop in any year, however, irrigation
 27 from Weber Reservoir occurs to the extent possible when water is available.

28 ¹¹ Evaporation and seepage losses associated with Weber Reservoir throughout the year are
 estimated to be approximately 4,860 acre-feet-year (“afy”), on average.

1 On March 15, 1918, President Woodrow Wilson set aside approximately 34,000 acres
2 of public lands for the Tribe.¹² These lands were not homesteaded and otherwise never left
3 federal ownership. Except for its southwest corner, most of the 1918 Lands fell beyond the
4 Original Reservation area.

5
6 On June 27, 1924, President Coolidge temporarily withdrew approximately 69,000
7 acres of public lands for the Tribe.¹³ These lands, which abutted the north, east, and south
8 boundaries of the 1918 Lands and were beyond the Original Reservation area, were not
9 homesteaded, and otherwise never left federal ownership. On March 3, 1928, Congress
10 permanently withdrew the same lands and added them to the Reservation.¹⁴

11
12 In June 1936, Congress authorized the Secretary of the Interior (“Secretary”) to add a
13 maximum of 171,200 acres of public lands to the Reservation¹⁵ and a few months later the
14 Secretary added and restored approximately 168,000 acres of public lands to the Reservation for
15 the Tribe’s benefit.¹⁶ These lands were not homesteaded and otherwise never left federal
16 ownership and were located both within and beyond the Original Reservation area and connected
17 the various sections of the Reservation to form a contiguous whole.¹⁷

18
19
20
21 ¹² Exec. Order No. 2820 (Mar. 15, 1918) (“1918 Lands”).

22 ¹³ Exec. Order No. 4041 (June 27, 1924).

23 ¹⁴ Act of Mar. 3, 1928, 45 Stat. 160 (“1928 Lands”).

24 ¹⁵ Act of June 22, 1936, 49 Stat. 1806.

25 ¹⁶ Secretarial Order, 1 Fed. Reg. 2090-91 (Sept. 25, 1936) (“1936 Lands”).

26
27 ¹⁷ Finally, in June 1972, the Secretary again exercised its authority under the Act of June 22,
28 1936 to restore approximately 2,900 acres of public lands to the Tribe. Pub. Land Order 5216, 37
Fed. Reg. 12,383 (June 19, 1972) (“1972 Lands”). These lands were not homesteaded, otherwise
never left federal ownership, and all fell within the Original Reservation area.

1 Generally speaking, the lands restored and added to the Reservation described here are
 2 not currently occupied by permanent residents. Analysis reveals, however, that these lands
 3 support both current and potential uses that are necessary to ensure that the Reservation as a
 4 whole is and continues to be a permanent homeland for the Tribe. These uses of the land and the
 5 corresponding water uses include irrigation and livestock grazing.
 6

7 **A. Irrigation**

8
 9 Portions of the 1936 Lands are arable, and with the application of water, are capable of
 10 growing food and forage crops. Analysis reveals that by accessing groundwater underlying the
 11 1936 Lands, the following irrigation projects are practicable:

- 12 1. Approximately 750 acres can be practicably irrigated to produce vegetable crops.

13 The enterprise would be supplied from groundwater under the 1936 Lands. The
 14 unit diversion requirement to practicably irrigate this land is estimated to be 3.26
 15 acre-feet per acre. Accordingly, the water right associated with the practicably
 16 irrigable portion of the 1936 Lands is 2,441 afy. The priority date for such a right
 17 is September 25, 1936.
 18

- 19 2. Pasture can be practicably irrigated to provide forage to support a commercial
 20 grass-fed beef enterprise. Analysis reveals that such an enterprise would require
 21 750 acres of land to raise both pasture and feed for the operation. The enterprise
 22 would be supplied from groundwater under the 1936 Lands. The unit diversion
 23 requirement for irrigation of this land is estimated to be 4.66 acre-feet per acre,
 24 and the diversion requirement for animal consumption is estimated to be 20.5 afy.
 25 Accordingly, the water right associated with this grass-fed beef enterprise is 3,512
 26 afy. The priority date for such a right is September 25, 1936.
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 28

1 **B. Livestock Grazing**

2 Livestock grazing (typically cattle) is a common practice and occupation throughout the
3 Walker River Basin and has been pursued throughout the entire Reservation for decades. The
4 majority of forage on the Reservation has historically been within the Original Reservation area,
5 nevertheless, grazing has occurred on the lands restored and added to the Reservation as well.
6 Analysis reveals that livestock grazing on the lands restored and added to the Reservation is
7 limited by the potential forage available.
8

9 On the 1918 Lands, the United States has identified 3 groundwater well sites and 2
10 springs historically used to provide livestock water. Analysis reveals that the 1918 Lands have
11 potential forage to support 62 Animal Units (“AU”). Accordingly, the water right associated with
12 the forage capacity of the 1918 Lands is 1.4 afy. The United States has the right to divert
13 groundwater from existing wells or from future wells that may be established, as needed. The
14 priority date for such a right is March 15, 1918.
15

16 On the 1928 Lands, the United States has identified 3 groundwater well sites and 1 spring
17 historically used to provide livestock water. Analysis reveals that the 1928 Lands have the
18 potential forage to support 161 AU. Accordingly, the water right associated with the forage
19 capacity of the 1928 Lands is 3.6 afy. The United States has the right to divert groundwater from
20 existing wells or from future wells that may be established, as needed. The priority date for such
21 a right is March 3, 1928.
22

23 On the 1936 Lands, the United States has identified 7 groundwater well sites and 1 spring
24 site historically used to provide livestock water. Analysis reveals that the 1936 Lands have the
25 potential forage to support 353 AU. Accordingly, the water right associated with the forage
26 capacity of the 1936 Lands is 7.9 afy. The United States has the right to divert groundwater from
27
28

existing wells or from future wells that may be established, as needed. The priority date for such a right is September 25, 1936.¹⁸

IV. GROUNDWATER UNDER THE RESERVATION

Federal reserved water rights may be asserted for both surface and groundwater. *United States v. Cappaert*, 508 F.2d 313, 317 (9th Cir. 1974), *aff'd*, 426 U.S. 128, 96 S. Ct. 2062, 48 L. Ed. 2d 523 (1976) (“In our view, the United States may reserve not only surface water, but also underground water.”); *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, 849 F.3d 1262 (9th Cir.), *cert. denied*, 138 S. Ct. 468, 199 L. Ed. 2d 356 (2017), and *cert. denied sub nom. Desert Water Agency v. Agua Caliente Band of Cahuilla Indians*, 138 S. Ct. 469, 199 L. Ed. 2d 356 (2017) (“the *Winters* doctrine does not distinguish between surface water and groundwater.”). Though the surface water direct flow irrigation rights of the Tribe were asserted in 1924, the Tribe’s groundwater rights remain unadjudicated, and no groundwater rights claims have been asserted to those waters that underlie the Reservation.

A. DCMI

Like other rural communities, Tribal members living on the Reservation must have sufficient drinking water, and the water sources supplying the Reservation must provide sufficient water to meet not only current but future needs of the Reservation. Water for domestic, commercial, municipal, and industrial (“DCMI”) uses is typically quantified on a per capita basis. Over the next 40 years, the population of the Reservation is estimated to grow to about 1,850 individuals. An analysis of water records and population data indicate that the water

¹⁸ No well or spring for cattle grazing have been located on 1972 Lands. Nevertheless, an additional 5 AU could be supported on these restored lands. The water right associated with the forage capacity of the 1972 Lands is 0.1 afy. For any future points of diversion located on 1972 Lands, the priority would be June 19, 1972.

1 consumption rate in 40 years was estimated to be approximately 312 gallons of water per person
2 per day. Thus using a 40-year projection, the Tribe must have an annual water right of 641 afy to
3 satisfy anticipated DCMI water uses.¹⁹ The United States anticipates that all diversions for
4 DCMI uses have occurred and will continue to occur within those lands originally reserved in
5 and continuously held for the Tribe since 1859. Thus, the priority for such a right is November
6 29, 1859.
7

8 **B. Irrigation**

9 Notwithstanding the 2,100 acres within the WRIIP, for which the Tribe is entitled to a
10 direct flow right under the Decree, the Tribe has historically used groundwater from wells to
11 irrigate approximately 1,238 acres of additional land on the Reservation. This irrigated land is
12 beyond the land irrigated within the WRIIP, and overlaps a portion the 2,800-acre non-WRIIP
13 lake pasture land and the 1056-acre Lake Pasture Diversion-acres irrigated from Weber
14 Reservoir. The water right associated with this historic groundwater use on the Reservation is
15 7,527 afy.²⁰ Historic groundwater use in this area is on the land originally reserved in and
16 continuously held for the Tribe since 1859, therefore, the priority date for such a right is
17 November 29, 1859.
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23 ¹⁹ To the extent that the Reservation population grows beyond the 40-year projections made here
24 and that the Tribe requires additional water for drinking purposes, the United States reserves the
25 right to seek additional water rights under the modification clause of the Final Decree. Final
26 Decree, Section XIV.

27 ²⁰ This groundwater water right is in addition to the groundwater-based irrigation claims
28 discussed above in Section III.A. It is not, however, in addition to or cumulative of the storage
water right from Weber Reservoir for the non-WRIIP pasture lands discussed in Section II. It is
intended to be supplemental to the storage water right when supplies from Weber Reservoir are
insufficient to serve the 1,238 acre area.

C. Livestock Grazing

The majority of stock grazing on the Reservation has historically occurred on the land originally reserved in and continuously held for the Tribe since 1859. In addition to watering livestock directly from the Walker River in this area, the United States identified 10 wells and 6 springs historically used to water livestock. The water right associated with the historic stocking rate and the forage capacity of these lands was estimated to be 36.3 afy. The priority for these water rights is November 29, 1859.

V. CLAIM SUMMARY

The Claim Summary Table, below, provides an overview of the water rights claimed on behalf of the Tribe.

Type of Water Right	Water Use	Water Source	Quantity (afy)	Priority Date
Weber Reservoir Storage – Reserved Right (Section II)	Historic Irrigation	Surface Water	To Capacity Whenever Available (13,100 af)	April 15, 1936
1936 Restored Land – Reserved Right (Section III.A.1)	Future Irrigation (veg. crops)	Groundwater	2,441	September 25, 1936
1936 Restored Land – Reserved Right (Section III.A.2)	Future Irrigation plus Livestock (grass-fed ent.)	Groundwater	3,512	September 25, 1936
1918, 1928, 1936, and 1972 Added and Restored Lands – Reserved Right (Section III.B)	Livestock	Groundwater	13.0	Various (depending on diversion location)
1859 Reserved Lands – Reserved Right (Section IV.C)	Livestock	Surface Water/ Groundwater	36.3	November 29, 1859
1859 Reserved Lands – Reserved Right (Section IV.B)	Historic and Present Irrigation	Groundwater	7,527	November 29, 1859
1859 Reserved Lands – Reserved Right (Section IV.A)	DCMI	Surface Water/ Groundwater	641	November 29, 1859

1 Respectfully submitted this 3rd day of May, 2019.

2
3 /s/ Andrew "Guss" Guarino
4 ANDREW "GUSS" GUARINO
5 TYLER J. EASTMAN
6 U.S. Department of Justice
7 Indian Resources Section
8 Environment & Natural Resources Div.

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10
11
12 ATTORNEYS FOR THE UNITED STATES

13 **Certificate of Service**

14 It is hereby certified that on May 3, 2019 service of the foregoing was made through the
15 court's electronic filing and notice system (*see* ECF No. 2100 and 2439) to all of the registered
16 participants.

17 By /s/ Andrew "Guss" Guarino
18 Andrew "Guss" Guarino
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